IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 1358 of 2004(J)

PETITIONER:

T.P.ANTONY, P.W.D.CONTRACTOR,
THOTTATHIL HOUSE, UDAYAMPEROOR, ERNAKULAM.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.SABU GEORGE

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, WATER RESOURCES DEPARTMENT, SECRETARIATE, THIRUVANANTHAPURAM.**
2. **SUPERINTENDING ENGINEER, M.V.I.P. CIRCLE, MOOVATTUPUZHA.**
3. **CHIEF ENGINEER, PROJECT -II, THIRUVANANTHAPURAM.**
4. **CHIEF ENGINEER, IRRIGATION AND ADMINISTRATION CHAIRMAN AND CONVENOR OF THE PRE-QUALIFICATION COMMITTEE OF THE WATER RESOURCES DEPARTMENT, THIRUVANANTHAPURAM.**

.2/-

*ADDL.R5 IS IMPLEADED:

R5. O.V. GEORGE,
'A' CLASS GOVT.CONTRACTOR,
OOMMELIL HOUSE, CHITTY STREET, CHALUKUNNU,
KOTTAYAM – 1.

(*ADDL.R5 IS IMPLEADED AS PER ORDER DTD. 1/04/2004 IN I.A.NO.1786/04)

BY SR. GOVERNMENT PLEADER SRI. BENJAMIN PAUL
BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE TENDER NOTICE FOR PRE-QUALIFICATION AND EXECUTION OF WORKS NO.DB-1/2003 DTD. 10/06/2003.

EXT.P2: COPY OF THE ADVERTISEMENT NO.DB4/03 DTD. 27/08/2003 PUBLISHED IN THE MALAYALA MANORAMA DAILY DTD. 17/09/2003.

EXT.P3: COPY OF THE NOTIFICATION DTD. 16/10/2003 BY THE 2ND RESPONDENT.

EXT.P4: COPY OF THE CERTIFICATE DTD. 03/06/2003.

EXT.P5: COPY OF THE CERTIFICATE DTD. 18/12/2002.

EXT.P6: COPY OF THE GOVERNMENT ORDER DTD. 09/06/1999 NO.G.O.(MS) 43/99/IRD THIRUVANANTHAPURAM.

EXT.P7: COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER, P.W.D.ROADS DIVISION, KOTTAYAM DTD.08/12/2003.

EXT.P8: COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER, P.W.D. ROADS DIVISION, KOTTAYAM NO. AB2/1066/88.

EXT.P9: COPY OF THE MINUTES OF THE PRE-QUALIFICATION COMMITTEE OF THE CHIEF ENGINEERS OF THE IRRIGATION DEPARTMENT HELD ON 13/05/2003.

EXT.P10: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.31869/2003 R DTD. 29/11/2003.

EXT.P11: COPY OF THE NOTIFICATION NO.D.B.1/03 DTD. 16/08/2003.

EXT.P12: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.38503/2003 DTD. 05/12/2003.

...2/-

WPC.NO.1358/2004 J

EXT.P13 (SERIES):COPIES OF THE ORIGINAL AGREEMENT NO.2/SE/ KCO/1987 – '88 AND 6 SUPPLEMENTAL AGREEMENTS.

EXT.P14: COPY OF THE CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER KIP (LB) DIVISION NO.V, KOLLAM DTD. 09/03/1995.

EXT.P15: COPY OF THE JUDGMENT DTD. 7/10/2004 IN W.A.NO.409 OF 2004 (A) PASSED BY THE HIGH COURT OF KERALA AT ERNAKULAM.

EXT.P16: COPY OF THE REPRESENTATION DTD. 19/07/2005 SUBMITTTED BY THE PETITIONER TO THE CHIEF ENGINEER, IRRIGATION AND ADMINISTRATION, TRIVANDRUM.

EXT.P16(A): COPY OF THE EXPERIENCE CERTIFICATE DTD. 18/06/2005 ISSUED BY THE SUPERINTENDING ENGINEER, ROADS AND BRIDGES, SOUTH CIRCLE, TRIVANDRUM TO THE PETITIONER.

EXT.P17: COPY OF THE LETTER NO.DBI 2.6509/89 DTD. 13/10/2005 ISSUED BY THE SUPERINTENDING ENGINEER, ROADS AND BRIDGES SOUTH CIRCLE, P.W.D. TRIVANDRUM, TO THE SUPERINTENDING ENGINEER, PROJECT CIRCLE, MUVATTUPUZHA.

EXT.P18: COPY OF THE ORDER DTD. 1/04/2004 IN WP(C) NO.1358/2004 (J) PASSED BY THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

I.A.NO.9206/2007:

EXT.P18: COPY OF THE LETTER NO.F3-3551/03 DTD. 14/11/2005 ISSUED BY THE SUPERINTENDING ENGINEER, PROJECT CIRCLE, MUVATTUPUZHA TO THE CHIEF ENGINEER, TRIVANDRUM.

EXT.P19: COPY OF THE LETTER NO.D.4.1131/06 DTD. 22/06/2007 ISSUED BY THE ASSISTANT PUBLIC INFORMATION OFFICER, MUVATTUPUZHA TO THE PETITIONER.

I.A.NO.10457/2007:

EXT.P20: COPY OF THE MINUTES DTD. 2/07/2007 ISSUED BY THE PRE-QUALIFICATION COMMITTEE MEETING OF THE CHIEF ENGINEERS OF THE IRRIGATION DEPARTMENT.

..3/-

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE EXPERIENCE CERTIFICATE DTD. 03/06/03 PRODUCED BY THE PETITIONER ALONG WITH THE APPLICATION.

EXT.R2(B): COPY OF THE EXPERIENCE CERTIFICATE DTD. 18/12/02 PRODUCED BY THE PETITIONER ALONG WITH THE APPLICATION.

EXT.R2(C): COPY OF GOVT. ORDER NO.G.O.(MS) NO.43/99/IRD DTD. 09/06/1999.

EXT.R2(D): COPY OF THE MINUTES OF THE PRE-QUALIFICATION COMMITTEE DTD. 19/12/03.

EXT.R2(E): COPY OF THE MINUTES OF PRE-QUALIFICATION COMMITTEE MEETING DTD. 29/12/03.

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): COPY OF LETTER ISSUED FOR ASCERTAINING THE GENUINETY OF EXPERIENCE DTD. 31/03/2005.

EXT.R4(B): COPY OF THE LETTER DTD. 19/04/2005 OF S.E.(ROADS &BRIDGES) SOUTH CIRCLE, THIRUVANANTHAPURAM TO C.E.PROJECT II, THIRUVANANTHAPURAM.

EXT.R4(C): COPY OF JUDGMENT DTD. 16/07/2004 IN WP(C) NO.20958/2002.

/TRUE COPY/

P.A.TO JUDGE

KSS

S. SIRI JAGAN, J.

WP(C) NO. 1358 OF 2004 - J

Dated this the 9th day of August, 2007

J U D G M E N T

The petitioner submitted tenders for a work for which tenders were invited by the first respondent. The petitioner was refused to be pre-qualified for the work since Ext.P5 experience certificate was not in respect of a work of similar nature for which tenders have been invited. The contention of the petitioner is that since this Court has confirmed Ext.P10 judgment in writ appeal by Ext.P15 judgment holding that the concept of similar nature was unauthorised and therefore, the tenders have to be evaluated for pre-qualification without reference to the concept of similar nature. The petitioner would contend that by virtue of Ext.P18 issued by the third respondent, it cannot now be disputed that Ext.P5 certificate is valid except for the concept of similar nature. The petitioner would point out that by Ext.P20, the petitioner has been pre-qualified for another work by the pre-qualification committee by considering Ext.P5

experience certificate itself by its decision dated 2.7.2007.

2. In view of the above contentions, it cannot be said to be irrelevant for the purpose. I am of opinion that the fourth respondent should reconsider the matter in the light of the above documents. This shall be done within a period of one month from date of receipt of a copy of this judgment. If the Chief Engineer finds that Ext.P5 is offered for the purpose of pre-qualification of the petitioner, further proceedings shall be taken for award of the contract in accordance with such decision.

The writ petition is disposed of with the above direction.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007